

**American General Personnel Leasing and Chicago
Truck Drivers, Helpers and Warehouse Work-
ers Union (Independent). Case 13-CA-31744**

November 12, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on May 19, 1993, the General Counsel of the National Labor Relations Board issued a complaint on July 29, 1993, against American General Personnel Leasing, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 12, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 14, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 24, 1993, notified the Respondent that unless an answer was received by September 2, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Illinois corporation, with an office and place of business in Chicago, Illinois (Respondent's facility), has been engaged in leasing drivers to other commercial entities. During the past calendar year, Respondent, in conducting its operations, provided services valued in excess of \$400,000 for Steiner Electric Co., an enterprise within the State of Illinois. At all material times, Steiner Electric Co., an Illinois corporation with an office and place of busi-

ness in Elk Grove Village, Illinois, has been engaged in the sale and manufacturing of electrical equipment. During the past calendar year, in conducting its business operations, Steiner Electric Co. sold and shipped from its Elk Grove Village, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its Chicago, Illinois facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since about April 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective from April 1, 1991, to March 31, 1994. At all times since April 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 1, 1993, the Respondent failed to continue in effect all the terms and conditions of the agreement described above by failing to remit union dues for the first quarter of 1993 to the Union which were collected from the Respondent's employees, and has since failed to remit such dues and the liquidated damages for late payment as provided for in article II, section 3 of the collective-bargaining agreement described above. The Respondent engaged in this conduct without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to remit union dues for the first quarter of 1993 to the Union which were collected from the Respondent's employees and has since failed to remit such dues and the liquidated damages for late payment provided for in the collective-bargaining agreement, we shall order the Respondent to remit the dues which were collected and pay the liquidated damages for the late payment provided for in the collective-bargaining agreement and, if appropriate, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, American General Personnel Leasing, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement which is effective from April 1, 1991, to March 31, 1994, by failing to remit union dues for the first quarter of 1993 to the Union which were collected from the Respondent's unit employees or by failing to remit such dues and the liquidated damages for late payment as provided in article II, section 3 of the collective-bargaining agreement. The unit includes the following employees:

All full-time and regular part-time drivers employed by the Employer at its Chicago, Illinois facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union the dues for the first quarter of 1993 which were collected from the Respondent's employees and pay the liquidated damages for late payment as provided in article II, section 3 of the collective-bargaining agreement.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-

¹ The record before us does not indicate whether the agreement provides for interest in addition to the liquidated damages. We leave resolution of this issue to the compliance stage.

cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 12, 1993

James M. Stephens,	Chairman
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Dennis M. Devaney,	Member
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John Neil Raudabaugh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement which is effective from April 1, 1991, to March 31, 1994, by failing to remit union dues for the first quarter of 1993 to the Union which were collected from our unit employees or by failing to remit such dues and the liquidated damages for late payment as provided in article II, section 3 of the collective-bargaining agreement. The unit includes the following employees:

All full-time and regular part-time drivers employed by us at our Chicago, Illinois facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union the dues for the first quarter of 1993 which were collected from our employees and pay the liquidated damages for late payment as provided in article II, section 3 of the collective-bargaining agreement.

AMERICAN GENERAL PERSONNEL LEASING